IN THE HIGH COURT OF JUDICATURE,

ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE ELEVENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

and
THE HON'BLE MR JUSTICE M.VENKATESWARA REDDY

WRIT PETITION NO : 16981 of 2004

Between:

1. The Special Officer and District Collector, Zilla Parishad, E.G. Kakinada.
2. The District Selection Committee, East Godavari District,
   Rep. by its Chairman & District Collector, E.G. Kakinada.
3. District Educational Officer, East Godavari, Kakinada.
4. The Government of Andhra Pradesh, Rep. by its Secretary,
   Education Department, Secretariat, Hyderabad.

..... PETITIONERS

AND

1. P. Suryanarayana Murthy, S/o Venkata Rao, C/o Bala Bharati Convent,
   Ainavilli Village & Mandal.
2. A. Suryanarayanacharyulu, S/o Narayanacharyulu, Cheyyeru Village,
   Mummidivaram Mandal.
3. Y.G. Ramakrishna Sarma, S/o Ravanayya Avadhanulu, R/o Madiki.
4. S.S.M.V. Ratnakara Sastry, S/o Ramakrishna Sarma, R/o Aryavatam.
5. U. Subba Rao, S/o Suryanarayana Murthy, C/o Vijaya Gowri Electronics,.
   Seethanagaram.
6. P. Goppala Krishna, S/o Satyanarayana Murthy, R/o T. Kothapalli, I.
   Polavaram Mandal.

7. V. Kameswara Rao, S/o Venkateswara Sarma, R/o Jikriyanagar, Yanam.

8. H.V.S. Bhimasankara Rao, S/o Satyanarayana, R/o 6-26, Draksharama.

9. A.V.S. Prasad, S/o Satyanarayana Murty, C/o Modern High School, Ramachandrapuram.

10. P. Bhaskara Rao, S/o Subbayya Sastry, R/o Main Road, Thapeswaram, Mandapeta Mandal.

11. A. Suryanarayana, S/o Ananthacharyulu, R/o Vedurupaka, Rayavaram Mandal.

12. S. Rajagopalacharyulu, S/o Ramanujacharyulu, C/o Sri Gopi Convent, Dwarapudi.

13. Ch. Picharao, S/o Satyananda Rao, Seethanagaram Mandal.

14. A.V.V. Satyanarayana, S/o Subrahmanyam, R/o 59-11-8, P & T Colony, Rajahmundry.

15. V.S.M. Sarma, S/o Venkata Subrahmanyeswara Rao, R/o 59-11-8, P & T Colony, Rajahmundry.

16. K. Jagannadham, S/o Suryanarayana Murthy, C/o Vijaya Lakshmi Convent, Kadali, Razole Mandal.

17. S. Suryanarayana, S/o Somayajulu, R/o Veeravallipalem, Inavilli Mandal.

18. T.K.Y.V. Tayaru, C/o S.S. Chary, R/o Flat No.1, Saikrupa Nivas, Sainathpuram, Behind Dr. A.S. Rao Nagar, Hyderabad.

19. D. Padmavathi, R/o 6-3-41/1, Dantuvari Street, Suryaraopeta, Kakinada.

20. S.V.M. Satyanarayana Murthy, S/o Krishna Murthy, C/o Satya Sai School, Ravulapalem.

21. D. Venkata Sathyanarayana Murthy, S/o Seshagiri Rao, R/o Kuchimanchi Agraharam, Amalapuram.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ or direction more particularly one in the nature of "Writ of Certiorari" calling for the records connected with order dated 7-5-2004 in O.A.No. 4608 of 2001 on the file of the Hon'ble Andhra Pradesh Administrative Tribunal, Hyderabad and quash the same as illegal and erroneous and pass such order or orders as this Hon’ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioners: GP FOR SERVICES I.

Counsel for the Respondent s: Mr. Ravi Kondaveeti.

The Court made the following :

THE HON'BLE SRI JUSTICE J.CHELAMESWAR

AND

THE HON'BLE SRI JUSTICE M.VENKATESWARA REDDY

W.P.No.16981 of 2004

ORAL ORDER : (Per JC,J)

The State of Andhra Pradesh and some of its officers are the writ petitioners. The writ petition is filed with the prayer as follows :

> "For the reasons stated in the accompanying affidavit, it is prayed that this Hon'ble Court may be pleased to issue an appropriate writ or direction more particularly one in the nature of "WRIT OF CERTIORARI" calling for the records connected with order dated 7.5.2004 in O.A.No.4608 of 2001 on the file of the Hon'ble Andhra Pradesh Administrative Tribunal, Hyderabad and quash the same as illegal and erroneous and pass such order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."

The undisputed factual background of this case is as follows :

Various local bodies like the Zilla Parishad run schools. It appears that for the purpose of appointing Special Language Pandits (Telugu) District Selection Committees were constituted in the year 1983, the further details of such selection committees is not relevant for the present purpose as the existence and the scope of the power of such a committee at the relevant point of time is not in dispute. The said District Selection Committee concerned with the East Godavari District, it appears, prepared a merit list consisting of 322 candidates from out of which appointments to the Special Language Pandit posts are to be made as and when the vacancies are available. Its also an undisputed fact that out of all the 322 persons whose names were included in the merit list, 74 persons were appointed initially.

It appears that subsequent to the said appointments, 38 vacancies arose in the District, but it appears that the original select list was misplaced. Pursuant to the

directions of the Government, the officers concerned for the preparation and maintenance of the said selection list rebuilt the selection list on 25.10.1991 on the basis of whatever material that was available with them. On the basis of the recorrected selected list, 38 persons were appointed. All the respondents herein who are admittedly included in the original selected list prepared by the District Selection Committee approached the Andhra Pradesh Administrative Tribunal in O.A.No. 1779 of 1992, in substance, seeking appointment. The said OA was disposed of by the Tribunal on 8.7.1992 directing that the cases of the present respondents be considered in accordance with law. Subsequently, the original selection list which was missing for some time, reappeared as mysteriously as it disappeared. On the basis of the said selection list, the State and its officers came to the opinion that four persons out of the above mentioned 38 persons were not entitled to be appointed and therefore show-cause notices were issued to those persons calling upon them to explain why their services could not be terminated. Challenging the said show-cause notice, the recipients of the same approached the Andhra Pradesh Administrative Tribunal in O.A.No. 1766 of 1994 and the said proceedings were stayed and immediately after service of notice, OA was allowed quashing the show-cause notices. Admittedly, the order has become final.

In the meanwhile, the respondents herein who succeeded in O.A.No.1779 of 1992 filed writ petition No.27881 of 1998 in this Court seeking the implementation of the orders dated 8.7.1992 passed in O.A.No.1779 of 1992. The said writ petition was allowed on 17.10.1998 directing the implementation of the orders as prayed for. Complaining that the said order of this Court is violated, the respondents approached this Court by way of Contempt in Contempt Case No.674 of 1999. The said contempt case, it appears, was closed with a direction to dispose of the O.A.No.1776 of 1994, mentioned supra, at an early date obviously for the reason, until the validity of the show-cause notice impugned therein is decided, the claims of the petitioners could not be decided.

In view of the fact that O.A.No.1776 of 1994 was allowed, the petitioners herein by proceeding dated 22.5.2001 came to the conclusion that the cases of the respondents herein cannot be considered for appointment. Challenging the same, the respondents herein approached the Andhra Pradesh Administrative Tribunal in

O.A.No. 4608 of 2001 which was allowed by the order impugned herein directing the consideration of the claims of the respondents herein for appointment to the posts of Special Language Pandits (Telugu) and hence the present writ petition by the State.

It is to be mentioned here that the four persons who received the show-cause notices which was the subject matter of O.A.No.1766 of 1994 are not parties herein. They are Mr.A.Viswanatha Sarma, Mr. D.Krishna Murthy, Mr. M.Sesha Charyulu and Mr. P.Subrahmanyam, who obtained 62, 60, 50 and 43 marks respectively in the examination conducted by the District Selection Committee in the year 1983. All the respondents herein except respondent No.18 obtained less than 62 marks. Only respondent No.18 obtained 63 marks. These facts appear from the order impugned in O.A.No. 4608 of 2001 and these facts are not in dispute before us.

Learned Government Pleader appearing for the petitioners submitted that the selection process pertains to the year 1983, i.e., almost a quarter century back. All the respondents attained above 50 years as on today and therefore it would not be in the public interest to consider their cases for appointment at this stage. He further submitted all the posts to which the petitioners are seeking appointments to, stood abolished.

He therefore submitted that accepting the fact that there was some irregularity in the matter of appointment of the four persons referred to earlier, such an irregularity took place long time back on the basis of certain facts which were beyond the control of the petitioners. Accepting the fact that such appointments were illegal, an illegality committed by the State earlier cannot form the basis for commanding the State to commit one more illegal act as the posts are not in existence today. The learned Government Pleader placed heavy reliance on a judgment of the Supreme Court in **Chandigarh Administration v. Jagjit Singh** wherein it was held :

> ***"…. Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be***

directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent-authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law — indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law — but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality, the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioners' case is similar to the other persons' case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the Court and seeking the relief. Is it not more appropriate and convenient to examine the entitlement of the petitioner before the Court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the case nor is his case. In our considered opinion, such a course — barring exceptional situations — would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. ...."

On the other hand, the learned counsel for the respondents Sri Ravi placed reliance on a judgment of the Supreme Court in **Ms.Neelima Shangla v. State of Haryana** in support of his contention that this Court would give such a direction where a person who is legally entitled to be appointed

I n **Neelima Shangla's case (2 supra)**, the petitioner therein appeared at the competitive test held in the year 1983-1984 for selection to the Haryana Civil Service (Judicial Branch). She secured the minimum prescribed mark of 55%. Though there were 54 vacancies available, the Public Service Commission purported to recommend only 26 names and the remaining posts were left unfilled. It

is in this context, the Supreme Court held that Neelima Shangla was entitled for a direction for appointment to the Service. It is to be mentioned here that the matter itself came to be decided by the Supreme Court in September, 1986 i.e., within a period of two years from the date of the competitive test.

In the case on hand, as already mentioned, there is a gap of almost 22 years from the date of the examination and 14 years from the date of appointment of four candidates, whose appointment is in dispute, as already discussed earlier. In these circumstances, we are of the opinion that a direction to consider the case of the petitioners for appointment at this stage would not be in public interest. As already noticed, almost all the respondents are aged above 50 years now.

However, the fact remains that some of the petitioners were unjustly denied appointment and people who were less qualified than the petitioners were appointed. In the circumstances, obviously there is a violation of the mandate of the Constitution under Article 14. The fundamental right of the petitioners, who are superior in rank to those 4 persons already appointed, is certainly infringed. Therefore, for the reasons mentioned above, we are not inclined to uphold order of the Tribunal in challenge. We are of the opinion that those respondents, who are superior in merit to the four persons already appointed in 1991 are entitled for public law damages.

The concept of awarding public law damages is very emphatically laid down by the Supreme Court in ***NILABATI BEHERA*** v. ***STATE OF ORISSA.*** The Supreme Court held that in an appropriate case where there is a violation of a fundamental right, the award of public law damages is within the jurisdiction of this Court or the Supreme Court, as the case may be. No doubt, the Supreme Court was dealing with the case of a violation of fundamental right guaranteed under Article 21 of the Constitution of India. However, the Supreme Court laid down at para 21 as under:

> **"21. The above discussion indicates the principle on which the Court's power under Arts.32 and 226 of the Constitution is exercised to award monetary compensation for contravention of a fundamental right. This was indicated in Rudul Sah (AIR 1983 SC 1086) and certain further**

observations therein adverted to earlier, which may tend to minimize the effect of the principle indicated therein, do not really detract from that principle. This is how the decisions of this Court in Rudul Sah and others in that line have to be understood and Kasturilal (AIR 1965 SC 1039) distinguished therefrom. We have considered this question at some length in view of the doubt raised, at times, about the propriety of awarding compensation in such proceedings, instead of directing the claimant to resort to the ordinary process of recovery of damages by recourse to an action in tort. In the present case, on the finding reached, it is a clear case for award of compensation to the petitioner for the custodial death of her son."

We, therefore, hold that respondent 18, who is more meritorious than all the four people who had already been appointed, is entitled to such compensation. It appears from the record that all the four persons appointed, whose details are given earlier, Sri Viswanatha Sarma obtained 62 marks i.e., higher mark than all other respondents herein, except the 18th respondent. Therefore, there cannot be any complaint against his appointment by any one of the respondents herein except R.18. If the said appointment of Viswanatha Sarma is found to be so justifiable, we are only left with two more vacancies that were illegally filled up. Therefore, only two more people out of the respondents would be entitled for the receipt of the public law damages. However, respondents 17, 20 and 21 admittedly secured 61 marks in the D.S.C. examination. If there are only two vacancies for which three people are equally qualified as per the competitive examination, obviously only two persons could have been appointed. Nothing in law is brought to our notice as to which two of the above mentioned 3 candidates should be preferred. We are informed that the law is silent on this aspect. Learned counsel appearing on either side submitted that in the matters of preparation of the seniority list in such a circumstance, the rules of union services under the statute provide that the older candidate is shown to be the senior *inter se*. We adopt the same principle and declare that the youngest of the above mentioned 3 respondents would not be entitled for the damages. The respondents may decide as to who is the youngest of the above mentioned three, within a period of 8 weeks from the date of this order on the verification of records and pay compensation within 4 weeks thereafter to the eligible candidates.

Coming to the question of damages, we are informed that the post for which the respondent sought appointment carried a salary of Rs.378/- and we are informed that the salary was revised from time to time though no material is placed before us regarding such revised salary by the respondents. In the circumstances, we are of the opinion, having regard to the totality of the circumstances that the above mentioned three respondents be paid damages to the tune of Rs.50,000/- each. It is open for the State of Andhra Pradesh to recover the amounts so paid to the above mentioned respondents from those officers, who are responsible for all these facets, if the State can identify them.

KNK/GS 11.07.2005

To

1. The Special Officer and District Collector, Zilla Parishad, E.G. Kakinada.
2. The Chairman & District Collector, E.G. Kakinada, District Selection Committee, East Godavari District.
3. The District Educational Officer, East Godavari, Kakinada.
4. The Secretary, Education Department, Government of Andhra Pradesh, Secretariat, Hyderabad.
5. Two CCs to the G.P. for Services-I, High Court of A.P., Hyderabad (OUT).
6. Two CD copies.

*Form-NIC-OGS/WP{**AVLR**}*